REMARKS

In response to the Office Action mailed November 17, 2004, each one of the cited references has been reviewed, and the rejections and objections made to the claims by the Examiner have been considered. The claims presently on file in the above-identified application are believed to be patentably distinguishable over the cited references, and therefore allowance of these claims is earnestly solicited. The amendment to claims in this response were not made earlier as applicants were not entirely certain of the allowable scope of the preferred embodiment of the present invention.

Allowed Claims

Attorney for applicant gratefully acknowledges that the examiner has allowed claims 16-20. In view of the allowance of claim 20, applicant has amended claims 2-15 to depend from allowed claim 20. Therefore claims 2-15 are now in condition for immediate allowance, and such action is respectfully requested.

Abstract

Responsive to the examiner's request, attorney for applicant has provided a substitute abstract which contains 150 words or less.

Claim Rejections

Rejections Under 35 USC §102(b)

Claim 21 has been rejected under 35 USC §102(e), as being anticipated by ***Gupta (2003/0111081).*** Claim 21 as currently amended patentably distinguished from the ***Gupta reference*** as claim 21 specifies amongst other things, as follows:

"21. (Currently Amended) A nasal cannula system, comprising:

a nasal cannula coupled between a pair of extension tubes, wherein one of said extension tubes terminates at a distal end thereof in a stop and wherein the other one of the extension tubes is adapted to be coupled to a fluid supply."

Nowhere is this combination of elements and steps described in, nor suggested by the ***Gupta reference***.

"Anticipation is established only when a single prior art reference discloses expressly or under the principles of inherency, each and every element of the claimed invention." *RCA Corp. v. Applied Digital Data Systems, Inc.*, (1984, CA FC) 221 U.S.P.Q. 385. The standard for lack of novelty that is for "anticipation," is one of strict identity. To anticipate a claim, a patent or a single prior art reference must contain all of the essential elements of the particular claims. *Schroeder v. Owens-Coming Fiberglass Corp.*, 514 F.2d 901, 185 U.S.P.Q. 723 (9th Cir. 1975); and *Cool-Fin Elecs. Corp. v. International Elec. Research Corp.*, 491 F.2d 660, 180 U.S.P.Q. 481 (9th Cir. 1974).

In the present Office Action, the Examiner's rejection is based on the ***Gupta reference***, which fails to show all of the essential elements of the instant invention.

The ***Gupta reference*** describes a nasal cannula assembly, which is detachable from a main tubing that is connected to an oxygen supply or a carbon dioxide monitor. (See Abstract, front page) More specifically, the ***Gupta reference*** teaches the following at Col. 3, paragraph 0026:

"[0026] FIG. 4 illustrates another preferred embodiment detachable nasal cannula assembly 200. The assembly 200 includes a nasal cannula portion 202 detached from main tubing 204 and 206. The nasal cannula portion 202 includes a hollow tubular body 208 and has two nasal projections 210 and 212, each extending outwardly and adapted to fit within a corresponding nasal passage of the nose of a patient (not shown). A diaphragm 214 acts as a barrier separating the hollow body 208 of the assembly 200 into an inhalation portion 216, where oxygen is supplied to a patient from an oxygen supply and an exhalation portion 218, where carbon dioxide flows from the patient to a carbon dioxide monitor. Nasal projection 210 acts as an inhalation portion 216 where oxygen is supplied, while nasal projection 212 acts as an exhalation portion 218 where carbon dioxide flows from the patient to a carbon dioxide monitor. FIG. 4 particularly illustrates the flow direction of oxygen and carbon dioxide within the nasal cannula portion 202. Although oxygen and carbon dioxide are depicted as flowing through the tubular body, it will be appreciated that the

present invention assemblies are also well suited for use with other gases and materials. The ends of the nasal cannula portion 202 include interconnecting portions 220 and 222. Preferably, the nasal cannula portion 202 is configured such that the body of the tubing extending between the interconnecting portions 220 and 222, is joined to itself at region A as shown in FIG. 4. Preferably, such joining is accomplished by attaching or forming respective outer surface regions of the tubular cannula portion to one another. This configuration promotes the portions 220 and 222 remaining in close proximity with one another. Main tubing portion 204 includes an interconnecting portion 224 that is adaptable to interconnecting portion 220, and main tubing portion 206 includes an interconnecting portion 226 that is adaptable to interconnecting portion 222. The mode of connection in connecting interconnecting portions 220 and 222 with interconnecting portions 224 and 226 include female/male connection, screw fastening, and any other known releasably fastenable mode of connection. The interconnecting portions 220, 222, 224 and 226 may also be in the form of nearly any shape so that the ends of the main tubing 204 and 206 are releasably fastenable with the ends of the nasal cannula portion 202. ***A closure device similar to clip 36 shown in FIGS. 1 and 2A may also be provided and utilized with the assembly 200." (Emphasis added)***

With reference to the closure device 36, the ***Gupta reference*** teaches the following at Col. 2, paragraph 0022:

"[0022] As noted, the assembly 10 comprises a nasal cannula portion 22 and main tubing portions 24 and 26. The nasal cannula portion 22 is releasably secured to the main tubing portions 24 and 26 by tubing connectors 28 and 30. Main tubing portion 24 is connected to a carbon dioxide monitor 32 and main tubing portion 26 is connected to an oxygen source 34. However, main tubing portion 24 can be connected to the oxygen source 34, while main tubing portion 26 can be connected to the carbon dioxide monitor 32. Alternatively, both main tubing portions 24 and 26 can be connected to the carbon dioxide monitor 32 or the oxygen source 34. The assembly 10 can therefore conduct both oxygen supplementation and carbon dioxide sampling simultaneously, or conduct either oxygen supplementation or carbon dioxide sampling. ***The assembly 10 may further include a clip 36 or other closure device that clamps the hollow body 12 and restricts the flow of oxygen or carbon dioxide (or any gas) in one or both of the main tubings 24 and 26 or one or both portions of the nasal cannula portion 22. The clip 36 is preferably retained with or generally secured to the nasal portion 22 and preferably near one or both of the ends 38 and 40." (Emphasis added).***

Attorney for applicant has noted in that the clip 36 is illustrated in FIG. 1 and FIG. 2A respectively, where FIG. 2A is a front view illustrating the nasal cannula portion separated from the main tubing. In either case, it would be

understood by those skilled in the art that the clip 36 merely restricts the flow of gases and does not block the flow of gases, since the drawings in the case show the clip 36 mounted to the tubing with gas flowing in both tubes. Moreover, it would be understood by those skilled in the art that a clip 36 is not a stop, which is disposed in the distal end of the tubing completely blocking the flow of gas and also terminating the tube itself.

Based on the foregoing, the novel features of the present invention are not disclosed, nor suggested by the ***Gupta reference*** in that the ***Gupta reference*** does not disclose, nor suggest a " an atomizer nozzle disposed within said sub-port tube, said atomizer nozzle being partially attached to said sub-port tube at about its distal end and partially attached to said endotracheal tube at about its distal end opening..." Instead, the ***Gupta reference*** teaches that the distal section of the extension tubing is adapted to be connected to the main tubing.

Thus, while the ***Gupta reference*** may teach a cannula system with a clip for restricting gas flow, the ***Gupta reference*** does not disclose, nor suggest, the novel features of the present invention as claimed. Therefore, claim 21 as amended, patentably distinguish over the ***Gupta reference***.

2. Rejection under 35 U.S.C. 103 (a)

Claims 22-25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta (US2003/0111081) in view of Bartholomew (U.S. 5, 400,776). Since claims 22-25 depend from claim 21, claims 22-25 patentably distinguish over the cited references either taken alone or in combination with one another under the same rationale as set forth earlier with respect to claim 21. Therefore claims 22-25 are in condition for immediate allowance and such action is respectfully requested.

Conclusion

Attorney for Applicant has carefully reviewed each one of the cited references made of record and not relied upon, and believes that the claims presently on file in the subject application patentably distinguish thereover, either taken alone or in combination with one another.

Therefore, all claims presently on file in the subject application are in condition for immediate allowance, and such action is respectfully requested. If it is felt for any reason that direct communication with Applicant's attorney would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned Jerry R. Potts, Esq. at the below-listed telephone number.

Dated: December 30, 2004

Respectfully submitted,

Law Office of Jerry R. Potts

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